

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RICHARD A. SCOTT,

Plaintiff,

V.

UNITED STATES OF AMERICA,

Defendant.

CIVIL ACTION NO. 2:05CV76-T

RECOMMENDATION OF THE MAGISTRATE JUDGE

After plaintiff passed away on June 15, 2005, his wife, Janice J. Scott, provided the court with a copy of his death certificate. Thereafter, on July 15, 2005, the court entered an order staying the action for a period of ninety days to permit a duly appointed representative of plaintiff's estate to enter an appearance in this action. (Doc. # 19). The order was served on plaintiff's wife on July 18, 2005 by certified mail. (Doc. # 20). The order advised her that, unless a motion to substitute was filed by plaintiff's estate within ninety days, this action may be dismissed pursuant to Rule 25(a) of the Federal Rules of Civil Procedure. Fed. R. Civ. P. 25 provides that, "[u]nless [a] motion for substitution is made not later than 90 days after the death is suggested upon the record by service of a statement of the fact of the death as provided herein for service of the motion, the action shall be dismissed as to the deceased party." Fed. R. Civ. P. 25(a)(1). More than ninety days have passed since service of the court's order on plaintiff's wife, and no motion for

substitution has been filed by plaintiff's estate.

Accordingly, it is the RECOMMENDATION of the Magistrate Judge that this action be DISMISSED.

The Clerk of the Court is ORDERED to file the Recommendation of the Magistrate Judge and to serve a copy on the parties to this action. The parties are DIRECTED to file any objections to the said Recommendation on or before November 10, 2005. Any objections filed must specifically identify the findings in the Magistrate Judge's Recommendation objected to. Frivolous, conclusive or general objections will not be considered by the District Court.

Failure to file written objections to the proposed findings and recommendations in the Magistrate Judge's report shall bar the party from a *de novo* determination by the District Court of issues covered in the report and shall bar the party from attacking on appeal factual findings in the report accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. Resolution Trust Co. v. Hallmark Builders, Inc., 996 F.2d 1144, 1149 (11th Cir. 1993); Henley v. Johnson, 885 F.2d 790, 794 (11th Cir. 1989).

DONE, this 28th day of October, 2005.

/s/ Susan Russ Walker

SUSAN RUSS WALKER
UNITED STATES MAGISTRATE JUDGE

